

## STATEMENT OF CONSIDERATIONS

REQUEST BY GENERAL ELECTRIC GLOBAL RESEARCH CENTER, FOR AN  
ADVANCE WAIVER OF DOMESTIC AND FOREIGN INVENTION RIGHTS UNDER DOE  
COOPERATIVE AGREEMENT NO. DE-FC26-00NT40974; W(A)-03-053, CH-1168

The Petitioner, General Electric Global Research Center (GE GRC), was awarded this cooperative agreement for the performance of work entitled, "Fuel Flexible Gasification-Combustion Technology for Production of Hydrogen & Sequestration-Ready CO<sub>2</sub>". The purpose of the cooperative agreement is to develop the advanced gasification-combustion (AGC) process to a level suitable for large-scale demonstration. The cooperative agreement includes the development of lab-scale, bench-scale and pilot-scale experimental facilities, the operation of these facilities and the evaluation of data obtained from these facilities, along with conducting economic and modeling studies for the Vision 21 Unmixed Fuel Processor (UFP) technology to assess the technical feasibility of the technology and its ability to meet performance goals set by DOE.

The total estimated cost of the cooperative agreement is \$3,378,920 with the DOE share being \$2,500,000, or 74%. The remaining cost share of 26% (\$878,920) will be borne by the petitioner. The period of performance is from October 1, 2000 to June 30, 2004<sup>1</sup>.

In its response to question 5 of the attached waiver petition GE GRC has described its technical competence in the field of fuel combustion. EG GRC states that it is an established expert in combustion modifications and the development of unique approaches to power generation. Two technologies have been patented: U.S. Patent 5,509,362 (Method and Apparatus for Unmixed Combustion as an Alternative to Fire), and U.S. Patent 5,827,496 (Methods and Systems for Heat Transfer by Unmixed Combustion), and form the basis of the UFP approach in conducting research and development in the general area for the past decade. GE GRC's response demonstrates its technical competency in the field of fuel combustion.

In its response to questions 9 and 10 of the attached waiver petition, GE GRC states that grant of the waiver will promote the development and commercial utilization of subject inventions by enabling it to achieve profitability at a lower cost to the customer. A variety of competing technologies are currently under development, and the efficient, environmental and cost-effective generation of electricity can be achieved by a variety of methods. The acquisition of waiver rights is not likely to place GE GRC in a dominant position since there such diverse methods of achieving the same result: power generation. Therefore grant of the waiver will have a positive effect on competition and market concentration.

The subject cooperative agreement will be modified to add the Patent Rights--Waiver clause in conformance with 10 CFR 784.12, wherein GE GRC has agreed to the provisions of 35 U.S.C §§ 202, 203, and 204. This waiver clause will also include a paragraph entitled U.S. Competitiveness, in which GE GRC agrees to substantial U. S. manufacture of subject inventions (attached hereto). Additionally, GE GRC agrees not to transfer subject inventions to any other entity unless that other entity agrees to these same requirements. The petitioner has further agreed to modification of the data clause of

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<sup>1</sup>The petitioner submitted its waiver petition to DOE September 11, 2003, and accepted the standard waiver terms and conditions December 15, 2003.

the subject cooperative agreement (48 C.F.R. 952.227-14) by adding paragraph (k), Alternative VI, concerning contractor licensing of data.

Considering the foregoing, it is believed that granting the waiver will provide the Petitioner with the necessary incentive to invest resources in the commercialization of the results of the agreement in a fashion which will make the agreement's benefits available to the public in the shortest practicable time. In addition, it would appear that grant of the above requested waiver would not result in an adverse effect on competition nor result in excessive market concentration. Therefore, in view of the objectives and considerations set forth in 10 CFR 784, all of which have been considered, it is recommended that the requested waiver, as set forth above, be granted.

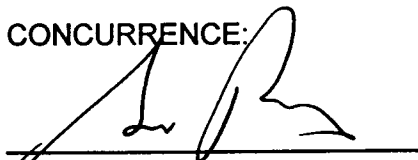


Mark P. Dvorscak  
Assistant Chief Counsel  
Intellectual Property Law Division

Date: Jan 12, 2004

Based on the foregoing Statement of Considerations and the representations in the attached waiver petition, it is determined that the United States and the general public will best be served by a waiver of rights of the scope described above, and therefore the waiver is granted. This waiver shall not apply to any modification or extension of this agreement, where through such modification or extension, the purpose, scope, or cost of the agreement is substantially altered.

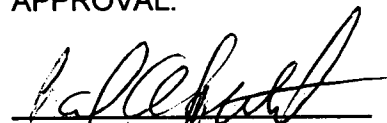
CONCURRENCE:



George Rudins  
Deputy Assistant Secretary  
Office of Fossil Energy  
Coal and Power Systems  
FE-20/FORS

Date: Feb. 18, 2004

APPROVAL:



Paul A. Gottlieb  
Assistant General Counsel  
for Technology Transfer and  
Intellectual Property

Date: 2-23-04

(t) U. S. COMPETITIVENESS The Contractor agrees that any products embodying any waived invention or produced through the use of any waived invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of the DOE that it is not commercially feasible to do so. In the event the DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., recoupment of the Government's investment, etc. The Contractor agrees that it will not license, assign or otherwise transfer any waived invention to any entity unless that entity agrees to these same requirements. Should the Contractor or other such entity receiving rights in the invention undergo a change in ownership amounting to a controlling interest, then the waiver, assignment, license, or other transfer of rights in the waived invention is suspended until approved in writing by the DOE.